



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Military Ocean Terminal Concord, CA; Restricted Area

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Direct final rule.

SUMMARY: The U.S. Army Military Surface Deployment and Distribution Command (SDDC) requested that the U.S. Army Corps of Engineers (Corps) change the name of a restricted area from “Suisun Bay at Naval Weapons Station, Concord; restricted area” to “Military Ocean Terminal Concord (MOTCO); restricted area.” The restricted area is located in Suisun Bay, north of the City of Concord, California. The request to change the name of the restricted area is due to a transfer of real estate from the U.S. Navy to the U.S. Army SDDC. A Memorandum of Agreement between the U.S. Navy and the U.S. Army for the interagency transfer of base closure property and all associated environmental programs for portions of the Naval Weapons Station Seal Beach Detachment Concord was signed on January 24, 2007. The SDDC officially accepted the former U.S. Navy real estate in Fall 2008 to Winter 2009.

DATES: This rule is effective [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER] without further notice, unless the Corps receives adverse comment by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER]. If we receive such adverse comment, we

will publish a timely withdrawal in the Federal Register informing the public that this rule will not take effect.

ADDRESSES: You may submit comments, identified by docket number COE-2018-0006, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: [david.b.olson@usace.army.mil](mailto:david.b.olson@usace.army.mil) . Include the docket number COE-2018-0006 in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2018-0006. All comments received will be included in the public docket without change and may be made available on-line at <http://regulations.gov> , including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](http://regulations.gov) or e-mail. The [regulations.gov](http://regulations.gov) web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public

docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any compact disc you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922 or Ms. Naomi Schowalter, U.S. Army Corps of Engineers, San Francisco District, at 415-503-6763.

#### SUPPLEMENTARY INFORMATION:

By letter dated October 23, 2018, SDDC's 834<sup>th</sup> Transportation Battalion Commander requested the restricted area name change from "Suisun Bay at Naval Weapons Station, Concord; restricted area" to "Military Ocean Terminal Concord (MOTCO); restricted area." The request was made because of the transfer of the restricted area property from the U.S. Navy to the U.S. Army SDDC. In response to this request by the SDDC, and pursuant to its authorities in Section 7 of the Rivers and

Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR Part 334 by changing the name of the restricted area.

The Corps is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comment. We are only changing the name of the facility associated with this restricted area, and are not changing the restricted area itself or the rules governing that restricted area.

#### Procedural Requirements

a. Review Under Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This direct final rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this direct final rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The Corps determined this direct final rule is not a significant regulatory action. This regulatory action determination is based on this direct final rule being limited to a name change for the facility associated with the restricted area, from “Suisun Bay at Naval Weapons Station, Concord” to “Military Ocean Terminal Concord.” This direct final rule is issued with respect to a military function of the Department of Defense.

b. Review Under the Regulatory Flexibility Act. This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354). The Regulatory Flexibility Act

generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). This rulemaking is limited to changing the name of the facility to which the existing regulations apply, and no changes are being made to the restricted area itself or to the regulations governing that restricted area. Unless information is obtained to the contrary during the comment period, the Corps certifies that the direct final rule would have no significant economic impact on the public. After considering the economic impacts of this direct final rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. Review Under the National Environmental Policy Act. The Corps expects that the direct final rule will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. If no adverse comments are received, the environmental assessment will be prepared before the effective date. After the environmental assessment is prepared, it may be reviewed at the District office listed at the end of the FOR FURTHER INFORMATION CONTACT, above.

d. Unfunded Mandates Act. The direct final rule does not impose an enforceable duty among the private sector and, therefore, are not a Federal private sector mandate and are not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Public Laws 104-4, 109 Stat. 48, 2 U.S.C. 1501 et seq.). We have also

found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334 – DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Amend § 334.1110 by revising the section heading and paragraph (b) to read as follows:

§ 334.1110 Military Ocean Terminal Concord; restricted area.

(a) \* \* \*

(b) The regulations. (1) No person, vessel, watercraft, conveyance or device shall enter or cause to enter or remain in this area. No person shall refuse or fail to remove any person or property in his custody or under his control from this area upon the request of the Commanding Officer of Military Ocean Terminal Concord or his/her authorized representative.

(2) The regulations in this section shall be enforced by the Commanding Officer, Military Ocean Terminal Concord, and such agencies as he/she shall designate.

Dated: December 6, 2018

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Thomas P. Smith, P.E.

Chief, Operations and Regulatory Division

Directorate of Civil Works

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